

ROBERT C. CARLSON, ESQ.  
Nevada Bar No. 8015  
JASON W. WILLIAMS, ESQ.  
Nevada Bar No. 8310  
KOELLER NEBEKER CARLSON & HALUCK, LLP  
300 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
Phone: (702) 853-5500  
Fax: (702) 853-5599  
Attorneys for Defendant  
*PN II, Inc., d/b/a Pulte Homes of Nevada,*  
*Pulte Building Systems, LLC, Del Webb*  
*Communities, Inc., and Centex Homes*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FULTON PARK UNIT OWNERS' ) **CASE NO. 2:11-cv-00783- NDF-MLC**

ASSOCIATION, a Nevada non-profit community )  
association, individually and in its representative ) **CONSOLIDATED WITH:**

capacity; LEON TURNER, an individual, ) **2:11-cv-01223**

individually and in his representative capacity; ) **2:11-cv-00812**

MICHAEL CROWDER, , an individual, ) **2:11-cv-00830**

individually and in his representative capacity; ) **2:11-cv-01498**

TRICIA CROWDER, , an individual, individually ) **2:11-cv-01875**

and in her representative capacity; LISA LYNN, , ) **2:11-cv-00206**

an individual, individually and in her ) **2:11-cv-00207**

representative capacity; RAINA MUSSER, , an ) **2:11-cv-00002**

individual, individually and in her representative ) **2:11-cv-00425**

capacity; LINDA TRIMMER, an individual, )

individually and in her representative capacity; )

DOE HOMEOWNER/CONDOMINIUM/ )

COMMUNITY ASSOCIATIONS 1-10,000; DOE )

HOMEOWNERS 1-250,000, )

Plaintiffs,

vs.

PN II, INC. d/b/a/ PULTE HOMES OF

NEVADA, a Nevada Corporation; D.R.

HORTON, INC., a Delaware corporation;

WIRSBO COMPANY, an Illinois corporation;

UPONOR WIRSBO COMPANY, an Illinois

company; UPONOR, INC., an Illinois

corporation; UPONOR CORPORATION, a

Finnish corporation; UPONOR NORTH

AMERICA, INC., a Delaware corporation; ROE

INDIVIDUALS 1-10,000, individuals; ROE

BUSINESS or GOVERNMENTAL ENTITIES 1-

10,000, including Nevada corporations; ROE

INDIVIDUALS 10,001-20,000 and ROE

BUSINESS or GOVERNMENTAL ENTITIES

10,001-20,000, including Nevada corporations,

Defendants.

**DEFENDANTS PN II, INC., dba  
PULTE HOMES OF NEVADA, PULTE  
BUILDING SYSTEMS, LLC, DEL  
WEBB COMMUNITIES, INC. AND  
CENTEX HOMES' MOTION TO  
STRIKE CLASS ALLEGATIONS  
FROM PLAINTIFFS' AMENDED  
COMPLAINT**

**DEFENDANTS PN II, INC., dba PULTE HOMES OF NEVADA, PULTE BUILDING  
SYSTEMS, LLC, DEL WEBB COMMUNITIES, INC. AND CENTEX HOMES’  
MOTION TO STRIKE CLASS ALLEGATIONS**

COME NOW DEFENDANTS, PN II, INC., d/b/a PULTE HOMES OF NEVADA,  
PULTE BUILDING SYSTEMS, LLC, DEL WEBB COMMUNITIES, INC., and CENTEX  
HOMES (hereinafter, collectively “Pulte” or “Defendants”), by and through their counsel of  
record, Koeller, Nebeker, Carlson & Haluck, LLP, and submit this Motion to Strike Class  
Allegations.

This Motion and the relief requested thereon is based upon the attached Memorandum of  
Points and Authorities, the pleadings and papers on file herein, and such other and further  
evidence as may be allowed by this Honorable Court.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. ARGUMENT**

**A. Motion to Strike Standard.**

Pursuant to Federal Rule of Civil Procedure 12(f), “[t]he court may strike from a pleading  
an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.  
“Pleadings” as defined by the Federal Rules, include a complaint Fed. R. Civ. P. 7. The purpose  
of a motion to strike is to avoid litigating “spurious issues” by dispensing with them prior to trial.  
*Sidney-Vinstein v. AH Robins Co.*, 697 F.2d 880, 885 (9<sup>th</sup> Cir. 1983) (citations omitted).

**B. The Court should strike Paragraphs 122-131 of the Amended Complaint  
because Class Allegations were Adjudicated and Denied.**

The Court dismissed the class claims raised in the Amended Complaint against the non-  
Uponor defendants by way of its Order dated November 27, 2013: “Plaintiffs Amended Motion  
to Certify Class [Doc. No. 691] is DENIED as to all non-Uponor Defendants.” *Order*, Docket  
1206, Page 63 ¶ 2. As a result of the ruling, the Court ordered the Plaintiffs to adjudicate all  
remaining claims in *Fulton Park*. *Id.* Yet the Amended Complaint in *Fulton Park* contains  
identical class allegations contrary to the Order, which provided a host of reasons why Plaintiffs’  
claims are not suitable for class adjudication.

For example, “The truth or falsity of claims relating to the non-Uponor Defendants, particularly those concerning Chapter 40 compliance by Plaintiffs and unnamed homeowners, are non susceptible to common proof which would be capable of resolving an issue that is central to the validity of each one of the claims in one stroke.” *Order* Page 61, ¶ 2. The Court also cited questions regarding statutes of limitation, settled homeowners, homeowners who did not respond to development-wide notices sent by builders, notice to subsequent purchasers, and the inherent nature of many claims (such as violations of the Nevada Deceptive Trade Practices Act) to require individualized inquiries into reliance, for example, as evidence that these claims will never be susceptible to common proof to meet the requirements of Rule 23. *Id.* at Pages 58-60.

As a result of this Court’s ruling, and the nature of the case as one requiring individual inquiries such that the requirements of Rule 23 can never be met, Pulte respectfully requests that the Court strike all class allegations from the Amended Complaint, Paragraphs 122-131, in conformity with its prior Order and the fact that issues related to Chapter 40 compliance and the causes of action raised by Plaintiffs have not changed since the ruling. *Order*, Docket 1206, on file herein; Fed. R. Civ. P. 12(f) (motions to strike for redundant matters).

### III. CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court strike all class allegations from Plaintiffs’ Amended Complaint.

DATED this 13<sup>th</sup> day of March, 2014.

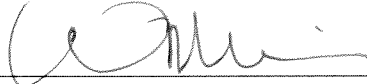
KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP

By: 

JASON W. WILLIAMS, ESQ.  
Nevada Bar No. 8310  
300 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
*Attorneys for Defendants PN II, Inc.,  
dba Pulte Homes of Nevada, Pulte Building  
Systems, LLC Del Webb Communities, Inc.,  
And Centex Homes*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the above DEFENDANTS PN II, INC., dba PULTE HOMES OF NEVADA, PULTE BUILDING SYSTEMS, LLC, DEL WEBB COMMUNITIES, INC., and CENTEX HOMES' MOTION TO STRIKE CLASS ALLEGATIONS was served on all counsel of record via the United States District Court CM/ECF system this 13<sup>th</sup> day of March, 2014.



\_\_\_\_\_  
An Employee of Koeller, Nebeker, Carlson & Haluck, LLP